order did not have indorsed on it, the notice required by O XLI r 5 of the Rules of the Supreme Court 1883, warning the person to obey the same, and that he would be liable to a process of execution if he failed to obey it. At first instance, Chitty J held that as the order was served on the defendant's solicitor and not on the defendant personally, the requirement of a warning notice did not apply to the situation as the solicitor 'must be taken from his professional position to be fully aware of the penalties of disobedience'. This decision was overruled by the Court of Appeal (Lindley LJ dissenting on a different point) where Baggallay LJ said:

> With every respect for the learned judge's opinion, I cannot take the same view of the construction of the rule. The order relates to all judgments, and r 5 is perfectly general in its tone; there is nothing in it limiting it to any particular kind of orders. It is suggested that it was intended to be confined to process of contempt. I can see no ground for confining it in that way. Then the question is whether it applies only to cases where the order is served on the person required to obey it. When we look at O xxxi r 22, we find that service on the solicitor shall be sufficient service – that must mean sufficient for all purposes – in order to found an application for an attachment. If the service is on the solicitor it is the duty of the solicitor to communicate it to the party, and he is himself liable to an attachment if he fails to do so. Therefore, this being a sufficient service to support an attachment, it appears to me clear that the provisions of O xxi r 5 apply. On this point, therefore, I am unable to come to the same conclusion as Mr Justice Chitty. I think the proceedings for attachment have failed by reason of the want of the proper indorsement.

The importance of the indorsement of the penal notice is further illustrated by the case *Stockton Football Co* v *Gaston*[4] where in the affidavit filed and served in support of a motion for attachment it was not stated that the order was indorsed with the notice. Kennedy J said at p 454:

> It is clear that applications of this nature ought to be made in strict conformity with the rules of court, and therefore, by the terms of O xli r 5, the order required to be obeyed must be served, with an indorsement upon it, stating the result of neglecting to obey the order. The defendant would be entitled to assume that the affidavit served with the notice of motion contained the evidence relied on. In the present case the service was clearly irregular, for the affidavit did not show that the order of the registrar, when served on the defendant, had indorsed upon it any memorandum such as is required by the rule to which I have referred. No doubt an affidavit was afterwards served, with the order, duly indorsed, exhibited to it, but this does not amount to a sufficient statement that the order did in fact contain the necessary indorsement at the time when it was served on the defendant. The proceedings are penal, and the rules must be strictly observed.

One final point. The argument is made that the position in our case here may be treated as if no order had been served on the respondent and following r 7(6) execution can be effected. I do not think it proper for me to disregard the fact that the order was served and it was without the penal notice. For me to accept this argument would really amount to saying that an order for a prohibitory injunction need not be drawn up as required by r 7(4) before enforcement may be carried out. I would in effect be deciding that r 7(4) has no application to a prohibitory injunction. That will be in direct conflict with what is stated in r 7(4). This court should not be doing that. As the liberty of a person is involved in such proceedings, the prescribed rule must be strictly observed.

In the circumstances, and much that I regret it as the respondent has clearly breached the injunction, this application must fail. Though the point appears technical, it is the very foundation upon which the power of the court to commit a person for contempt under O 45 of the RSC rests. In the result, I make no order on the motion. Having regard to the circumstances of the case, I also make no order as to costs.

Application dismissed.

Solicitors: *Vijay Perumal & Jeremiah; JS Yeh & Co.*

Reported by *Ng Sheau Jiuan*

Re Winston Chen Chung Ying

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 387/86
WEE CHONG JIN CJ, LAI KEW CHAI AND RAJAH JJ
16 NOVEMBER 1988

Legal Profession – Advocate & solicitor – Plea of guilt to offence under Companies Act – Conviction – Grossly improper conduct in the discharge of professional duty – Complaint by Attorney General – Disciplinary proceedings by Law Society – Show cause by advocate and solicitor – Legal Profession Act (Cap 217, 1970 Ed), ss 80, 84(2)(a), (h) & 98(1) – Companies Act (Cap 185, 1970 Ed), s 39(4)

These disciplinary proceedings before the High Court of three judges (Wee Chong Jin CJ, Lai Kew Chai and Rajah JJ) were, following a complaint by the Attorney General, initiated by the Law Society of Singapore against the respondent Winston Chen Chung Ying, an advocate and solicitor, under s 84(2)(a) and (b) of the Legal Profession Act (Cap 217, 1970 Ed). In so far as the High Court is concerned, the respondent is required to show cause why he should not be dealt with under s 80 of the Act in respect only of charges nos 2 and 3, which, so far as material, read as follows:

Charge no 2 (the conviction charge): 'By reason of his having been convicted of the offence referred to in paras 32, 33 and 33a (abetting a contravention of s 39(4) of the Companies Act) the respondent rendered himself liable to discipline under s 84(2) of the Legal Profession Act.'

Charge no 3 (the grossly improper conduct charge): 'The respondent, in or about April 1982, in connection with an offer of or invitation to purchase shares in CCC (Holdings) Ltd, did aid

and abet the directors of the said company in concealing or withholding from the offerees or invitees the material facts set out in paras 28 and 29 ..., particularly the premium of $25,000 per share which an applicant had to pay at the pain of forfeiting the initial payment of $2,000 or $3,000, and he was thereby guilty of grossly improper conduct in the discharge of his professional duty and has rendered himself liable to discipline under s 84(2)(b) of the Legal Profession Act, or if practising in England he would thereby have been guilty of conduct unbefitting a solicitor and has rendered himself liable to discipline under s 84(2)(h) of that Act.'

When a large piece of land was available, Derrick Chong considered the setting up of a proprietary club. Huang Sheng Chan was prepared to participate in the venture and they were joined by Quek Leng Chye. Chong instructed a legal firm to advise them on the legal and financial matters concerning the joint venture. The respondent was the solicitor in charge of this matter. It was made clear to the respondent that the intention of the participants in the joint venture was to purchase and develop the land under the ownership of a limited company which would establish and run the club for profit. The only way to become a member of this exclusive club was to purchase a share or specified number of shares in the company at a premium well above the par value. The obvious intention was to make as much profit as possible through the subsequent sale of the company's shares.

On 1 August 1979 a joint venture agreement was signed. On 11 August 1979 a company, City Country Club Pte Ltd, was incorporated. It was converted into a public company called CCC (Holdings) Ltd on 10 January 1982. It was ready to commence business on 10 March 1982, having filed a statement in lieu of prospectus. At the same time, a private limited company City Country Club Pte Ltd (thus retaining the old name) was to be set up to establish and run a proprietary club, by taking a lease of the club premises from CCC (Holdings) Ltd, which wholly owned City Country Club Pte Ltd, incorporated on 17 March 1982.

As instructed by Huang, the respondent sought expert advice to devise a scheme which attracted either no tax or the minimum possible. The respondent was concerned that the implementation of the scheme might require the issue of a prospectus. Huang was not in favour of having a prospectus because of the time and trouble that the issue of a prospectus would entail. The respondent was also concerned with the legal issue of whether the potential members of the club would constitute a 'section of public' within the meaning of s 4(6) of the Companies Act.

Following subsequent consultations between Huang and the respondent, it was decided that the paid up capital of the company (which had been increased from time to time and was then $5 million in shares of $1 each) would be consolidated into 1,000 shares of $5,000 each. Huang wanted to issue bonus shares on the basis of two for one and sell each bonus share which had a par value of $5,000 at $30,000. The original version of the letter of invitation did not state that the sale price of each $5,000 share was to be $30,000. The sale price had been inserted at the suggestion of Derrick Chong. After going through the letter, the respondent amended the last paragraph of the letter, and then deleted the sale price of $30,000. Many of the invitees knew that the price of each share was $30,000. Unfortunately, some did not. They thought the shares would be sold at $5,000 each. A complaint was lodged with the Registrar of Companies and investigations were commenced. Subsequently, the money paid by applicants for the shares was returned.

The respondent, Huang, Quek Leng Chye, Derrick Chong and two others were eventually charged in the District Court. On 9 February 1983, the respondent pleaded guilty to a charge of an offence punishable under s 39(4) of the Companies Act read with s 109 of the Penal Code. Upon his plea of guilt, he was convicted by the District Court. On 12 February 1983, the respondent was sentenced to pay a fine of $4,000.

The Disciplinary Committee found, on charge no 2, that the respondent's plea of guilt and conviction of the offence in question implied a defect of character which made the respondent unfit for his profession, and, on charge no 3, his concealment of the premium had been deliberate and his conduct amounted to grossly improper conduct in the discharge of his professional duties.

Held:

(1) The finding on charge no 2 by implication of the Disciplinary Committee that the respondent had committed an intentional breach of the law is against the weight of the evidence. The respondent had no defence in law because he was wrong in his view that the invitees did not constitute 'the public' or 'any section of the public' and by virtue of the 'deeming' provision in s 43 of the Companies Act. It was not an essential ingredient of the offence with which he was charged that he knew that the invitees were, in law, the public or a section thereof.

(2) In any case, while the making of enormous profits may be morally objectionable to some, it is not morally wrong to want to make as much profit as possible and certainly not criminal per se. In that context, even if the deletion of the sale price was indeed to enable Huang to increase it subsequently, the court does not think it amounted to such reprehensible conduct as to come within the ambit of s 80(2)(b) of the Legal Profession Act. Accordingly, the court disagree with the conclusions of the Disciplinary Committee on charge no 3.

(3) The two charges nos 2 and 3 have not been made out by the Law Society. The respondent has therefore shown cause why he should not be dealt with by this court under the provisions of s 80 of the Legal Profession Act.

(4) Each party to bear its own costs before the court and the Disciplinary Committee.

Case referred to

1 *Isaac Paul Ratnam* v *Law Society of Singapore* [1976] 1 MLJ 195 (folld)

Legislation referred to

Companies Act (Cap 185, 1970 Ed) s 39(4)
Legal Profession Act (Cap 217, 1970 Ed) ss 80, 84(2)(a), (h), 98(1)
Penal Code (Cap 103, 1970 Ed) s 109

G Lightman QC (*Michael Hwang* with him) for the respondent.

Warren Khoo for the Law Society.

Cur Adv Vult

Wee Chong Jin CJ (delivering the judgment of the court): These are disciplinary proceedings before a court of three judges constituted under the Legal Profession Act. The Law Society of Singapore is represented by Mr Warren Khoo, while Winston Chen Chung Ying (hereinafter called 'the respondent') is represented by Mr Gavin Lightman QC and Mr Michael Hwang.

The proceedings before the Disciplinary Committee

Following a complaint by the Attorney General, the Law Society initiated disciplinary proceedings against the respondent. The Disciplinary Committee ('the DC') heard the following charges (contained in the Law Society's amended statement of case) against the respondent:

Charge no 1, so far as material, reads:

> By reason of the matters referred to in paras 14, 15 and 15A (intending or attempting by his letter dated 2 December 1981 to cajole, influence or mislead the Registrar of Companies into giving a favourable reply on whether a prospectus was required) the respondent was guilty of grossly improper conduct in the discharge of his professional duty and has rendered himself liable to discipline under s 84(2)(b) of the Legal Profession Act or if practising in England he would thereby have been guilty of conduct unbefitting a solicitor and has rendered himself liable to discipline under s 84(2)(h) of that Act.

Charge no 2, so far as material, reads:

> By reason of his having been convicted of the offence referred to in paras 32, 33 and 33A (abetting a contravention of s 39(4) of the Companies Act) the respondent rendered himself liable to discipline under s 84(2)(a) of the Legal Profession Act.

Charge no 3, so far as material, reads:

> The respondent, in or about April 1982, in connection with an offer of or invitation to purchase shares in CCC (Holdings) Ltd, did aid and abet the directors of the said company in concealing or withholding from the offerees or invitees the material facts set out in paras 28 and 29 ..., particularly the premium of $25,000 per share which an applicant had to pay at the pain of forfeiting the initial payment of $2,000 or $3,000, and he was thereby guilty of grossly improper conduct in the discharge of his professional duty and has rendered himself liable to discipline under s 84(2)(b) of the Legal Profession Act, or if practising in England he would thereby have been guilty of conduct unbefitting a solicitor and has rendered himself liable to discipline under s 84(2)(h) of that Act.

Charge no 3 originally read '... in improperly concealing or withholding from ...', but the word 'improperly' was dropped at a very late stage in the proceedings before the DC.

There was a fourth charge which was abandoned before the DC commenced its hearing. This charge (charge no 4), so far as material, reads:

> The respondent did in or about April 1982 aid and abet the directors of CCC (Holdings) Ltd in the preparation of documents for issue and circulation by the directors which he knew or had reason to believe were deemed to be prospectuses under the provisions of the Companies Act without complying with the requirements of the Companies Act relating thereto, when he knew or had reason to believe that such compliance was necessary or had no or no sufficient reason to believe that it was not necessary, and the respondent was thereby guilty of grossly improper conduct in the discharge of his professional duty and has rendered himself liable to discipline under s 84(2)(b) of the Legal Profession Act, or if practising in England he would thereby have been guilty of conduct unbefitting a solicitor and has rendered himself liable to discipline under s 84(2)(h) of that Act.

Section 84 of the Legal Profession Act (Cap 217, 1970 Ed) is now s 80 of the Legal Profession Act (Cap 161, 1985 Ed). We propose to refer to the sections in the Companies Act as they appear in the 1979 Reprint as several amendments have been made since the material times of the events herein.

The DC found no cause of sufficient gravity for disciplinary action existed in respect of charge no 1 as it was not proved, and that cause of sufficient gravity for disciplinary action existed in respect of charges no 2 and 3. The DC's findings on charge no 1 were tantamount to an 'acquittal'.

The Attorney General sought judicial review of the DC's conclusions on charge no 1 in two sets of proceedings. The first set of proceedings (Originating Summons No 85 of 1986) was discontinued, after leave to apply for judicial review had been granted by the High Court, on the ground of procedural irregularity. The Attorney General then filed the second set of proceedings (Originating Summons No 722 of 1986). This application was dismissed by the High Court and the matter stopped there.

Therefore, in so far as this court is concerned, the respondent is before us to show cause why he should not be dealt with under s 80 of the Legal Profession Act in respect of charges no 2 and 3 only.

The facts

Sometime before 1979, the American Club considered relocating its premises from Scotts Road to Stevens Road, and for this purpose intended to purchase a large piece of land at Stevens Road. This piece of land belonged to City Developments Ltd. The intended purchase was not proceeded with.

Derrick Chong was the manager of the American Club. When the idea of purchasing that piece of land was abandoned by the American Club, Derrick Chong considered the setting up of a proprietary club. He approached Huang Sheng Chan, a man of considerable financial means. Huang was prepared to participate in the venture. Subsequently, they were joined by Quek Leng Chye, a director in the Hong Leong group of companies. The participants agreed to provide the initial financing for the joint venture. Subsequent financing was to be provided by the Hong Leong group.

In May 1979, Derrick Chong instructed the law firm of M/s Shook Lin & Bok to advise them on the legal and financial matters concerning the joint venture. The respondent was a partner in this law firm. At all material

times, he was the lawyer in charge of this matter, although he was assisted later by a legal assistant called Chow Peng.

It was made clear to the respondent that the intention of the participants in the joint venture was to purchase and develop the said piece of land under the ownership of a limited company which would establish and run the club for profit. The only way to become a member of this exclusive club was to purchase a share or specified number of shares in the company at a premium well above the par value. The obvious intention was to make as much profit as possible through the subsequent sale of the company's shares.

The promoters sought advice on the tax aspects of the venture from the respondent as well as a firm of chartered accountants. On 1 August 1979, a joint venture agreement was signed by Huang, by Tan Kee representing the Hong Leong group, by Ng Cheng Bok as nominee for Huang, and by Derrick Chong. On 11 August 1979, a company known as City Country Club Pte Ltd was incorporated. It had an authorized capital of $1 million divided into one million ordinary shares of $1 each. The Hong Leong group financed the purchase of the said piece of land, and construction work then began.

Huang consulted certain merchant bankers on the corporate structure of the club that was intended to be set up. He was advised that the sale of equity shares in the company to prospective members would not be the most expeditious method to proceed with. This was because of the rather onerous requirements of the Companies Act on prospectuses.

In May 1981, Huang met the respondent. Huang ruled out equity participation by members of the club because of the time and trouble involved in issuing a prospectus. Huang informed the respondent that he wanted to establish a proprietary club, recover the investment from membership fees and 'be able to kick out of the club after 10-20 years'. The respondent advised that tax of 40% would be levied on the membership fees. Huang then instructed the respondent to devise a scheme which attracted either no tax or the minimum possible.

The respondent then consulted public accountants on the issue of tax avoidance. However, he did not think the advice rendered and the schemes proposed satisfactory. With Huang's consent, he sought advice from Stephen Oliver QC in London. The scheme proposed by the Queen's Counsel was:

> The existing company which owns the Stevens Road land should acquire or incorporate a new company to carry on business as a proprietary club. The existing company would become and remain the beneficial owner of all the shares in the club company.
>
> The existing company would agree to grant a lease of the Stevens Road land to the club company at an annual rent which provided the existing company both with sufficient income to pay off interest and principal borrowed to finance the development, and in due course to provide it with profit to be distributed as dividend. The lease would in fact commence when the land had been developed and the club company had started to trade.
>
> The club company would canvass for club membership. It would be a condition of their membership of the club that the prospective member bought qualification shares in the existing company. The club company could be financed by club membership subscriptions, funds advanced from the existing company and, if required, by borrowing.
>
> The existing company would revalue the Stevens Road land as developed and make a bonus issue of shares representing the revaluation surplus.
>
> The four individuals, being the only persons then entitled to the bonus shares, would each vest a number of such bonus shares in the name of a nominal company as bare nominee. The number of bonus shares so vested would be enough to satisfy the requirements of the potential members of the club. The four individuals would retain enough shares in the existing company to secure control in their hands.

The DC noted in its report that the idea of a nominal or nominee company was part of the tax avoidance scheme and was solely for that purpose. The idea of a nominee company would feature again in the respondent's letter to the Registrar of Companies, where it was stated to be for the purpose of ensuring fairness between the promoters in the sale of shares to prospective members of the club by holding the proceeds of sale in trust for the promoters proportionately.

Following Oliver QC's advice, discussions were held with another firm of public accountants on the tax aspects of the proposed scheme. The public accountants expressed doubt about the workability of the tax scheme and made some suggestions. There followed further consultation with the Queen's Counsel. The decision was then made to proceed with the scheme suggested but bearing in mind the points raised by the public accountants.

The respondent was concerned that the implementation of the scheme might require the issue of a prospectus. Huang was not in favour of having a prospectus because of the time and trouble that the issue of a prospectus would entail. The respondent consulted his senior partner in the law firm and was told, in an off-the-cuff opinion, that a prospectus would not be necessary if the invitations were sent out individually. The respondent was also warned that a prospectus had a six-month life span only.

The DC found that the respondent had to find a way out of the statutory requirement of a prospectus for the following reasons. Huang had intended to sell the shares in stages over a period which would have exceeded six

months. Further, Huang did not wish to be bound by a fixed price as he intended to raise the price of the shares whenever demand made it possible for him to do so. It was assumed that the offer price of the shares must be stated in the prospectus.

The respondent was concerned with the legal issue of whether the potential members of the club would constitute a 'section of the public' within the meaning of s 4(6) of the Companies Act which reads:

> Any reference in this Act to offering shares or debentures to the public shall, unless the contrary intention appears, be construed as including a reference to offering them to any section of the public, whether selected as clients of the person issuing the prospectus or in any other manner; ...

In October 1981, he decided to seek the opinion of a Queen's Counsel from Australia as the local provision of law was borrowed from the Australian Companies Act. David Bennett QC, in his opinion on whether members of a private club constituted a 'section of the public', concluded that the issue involved basically a question of degree.

The respondent instructed the firm's librarian to photocopy the cases, and to get the textbooks, referred to by Bennett QC in his opinion. About a week later, the respondent wrote to Huang indicating that a prospectus was preferable unless exemption under s 39A of the Companies Act was obtained from the Registrar of Companies.

Following subsequent consultations between Huang and the respondent, it was decided that the paid-up capital of the company (which had been increased from time to time and was then $5 million in shares of $1 each) would be consolidated into 1,000 shares of $5,000 each. Huang wanted to issue bonus shares on the basis of two for one and sell each bonus share, which had a par value of $5,000, at $30,000.

The respondent prepared an outline of the scheme proposed by Oliver QC and the steps to be taken in the implementation of that scheme. This was sent to Huang who distributed it to the other promoters for their consideration. A meeting of all promoters was arranged at 11 am on 17 November 1981 at the respondent's office.

A meeting was also scheduled at the respondent's office around lunch time on 17 November 1981 for the respondent to meet Lee Theng Kiat, an assistant registrar of companies.

It is apposite at this stage to explain briefly how Lee Theng Kiat came into the picture. Lee Theng Kiat and Chow Peng were classmates in the university. When they graduated, both joined the Singapore Legal Service. They had worked together as legal officers in the Ministry of Defence for several years. In April 1980, Lee Theng Kiat was transferred to the Registry of Companies. In August 1980, Chow Peng left the Legal Service and joined the law firm of Shook Lin & Bok. In December 1980, he became the statutory secretary of the company in question and attended to the documentation work of the company. Chow Peng and Lee Theng Kiat met for lunch fairly regularly. The respondent asked Chow Peng to arrange a meeting with Lee Theng Kiat so that the respondent could discuss the club scheme with him.

At 11 am on 17 November 1981, the respondent met with Huang, Quek Leng Chye and Derrick Chong. They decided to proceed with the club scheme. The respondent informed them that he was meeting the assistant registrar of companies later to discuss the possibility of obtaining an exemption from issuing a prospectus and the questions of stating the fixed price of the shares and the six-month life span of the prospectus. Quek suggested that the respondent ask Lee Theng Kiat whether a prospectus was necessary at all.

Later, the respondent met and spoke to Lee Theng Kiat in the presence of Chow Peng. Lee asked the respondent to write in officially and he would then consider the questions. The respondent agreed.

The respondent then studied the opinion rendered by David Bennett QC earlier, and the cases and the portions of the textbooks referred to therein. After that, he drafted the letter to Lee Theng Kiat. After obtaining Huang's approval, the letter was sent to the Registrar of Companies on 2 December 1981. It was stated to be for the attention of Lee Theng Kiat.

In view of the DC's conclusion on charge no 1, which was based on this letter, we do not think it necessary to set out the text of the letter. In brief, the letter spelt out the proposed scheme and the view of the legal advisors that no prospectus was necessary as there would not be an offer of shares to the public within the meaning of s 4(6) of the Companies Act. It also asked, in the event that the Registrar of Companies thought a prospectus was required, whether the registrar agreed with the interpretation of the legal advisors concerning the questions of not having a fixed price for the shares and of the statutory requirement in s 39(1)(f) of the Companies Act concerning the six-month life span of the prospectus. Photocopies of pp 56-60 of *Palmer's Company Precedents*, 17th Ed, were enclosed with the letter.

On 6 January 1982, a discussion took place between the respondent and Lee Theng Kiat in the latter's office at the end of which Lee said he would be writing to say that no prospectus would be required. The respondent later telephoned Huang and informed him of what Lee Theng Kiat had said. It was agreed that the respondent should proceed with the documentation to implement the scheme. This was confirmed in the respondent's letter dated 8 January 1982 to Huang.

On 10 January 1982, the respondent caused City Country Club Pte Ltd to be converted into a public company called CCC (Holdings) Ltd. This was done to free the company from legal restrictions applicable to a private limited company. The new public company could have more than 50 shareholders, its shares were freely transferable, and it could invite the public to subscribe for its shares.

At the same time, a private limited company called City Country Club Private Ltd (thus retaining the old name) was to be set up to establish and run a proprietary club, by taking a lease of the club premises from CCC (Holdings) Ltd.

On 20 January 1982, the respondent received Lee Theng Kiat's letter dated 11 January 1982 which stated that since no fresh shares were being offered, there would be no applications for shares of the company to be made by any of the persons qualified to do so, and accordingly, s 37(2) of the Companies Act would not apply and a prospectus was not required to be registered.

Some time later, the respondent noticed that s 37(2), rather than s 37(1), was referred to and sought confirmation that this was an error. Lee Theng Kiat replied acknowledging the error and added that 'in any case the facts of the present case also seem to indicate that since no invitation to the public is being made, a company is exempted from the provisions of s 37(1) under s 37(2)'. The respondent testified that he saw this second letter only on 22 February 1982. It was thus apparent that the steps being taken were not based on this letter.

Sometime between 2 and 4 February 1982, the files pertaining to this scheme were handed over to Chow Peng, who drafted the letter of invitation that was to be sent out. We will come to the text of this letter shortly. Between 4 and 18 February 1982, the respondent was out of Singapore for a case before the Privy Council.

On 22 February 1982, the respondent, who was ill, had to attend an extraordinary general meeting of CCC (Holdings) Ltd. It was held at the respondent's office. The 5 million issued shares of $1 each were consolidated into 1,000 shares of $5,000 each. The authorized share capital was increased to $20 million by the creation of 3,000 additional shares of $5,000 each. An amount of $10 million, being part of the surplus created by the revaluation of the land, was capitalized and appropriated to pay for 2,000 of the new shares at a par value of $5,000 each. These would be issued to the shareholders as two-for-one bonus shares. It was also resolved that the remaining 1,000 new shares were to be offered at a premium of $25,000 each as a one-for-one rights issue to the shareholders.

On 10 March 1982, CCC (Holdings) Ltd was ready to commence business, having filed a statement in lieu of prospectus. On 17 March 1982, its proposed wholly owned subsidiary (City Country Club Pte Ltd) was incorporated.

On 30 March 1982, there was a meeting in Huang's office at Orchard Towers. Huang, Quek Leng Chye and Derrick were present. When the respondent arrived, he saw Huang signing a stack of printed letters. The respondent looked at the letters and saw that they were the letters of invitation which he had not seen before as the final draft was agreed between Chow Peng and Derrick Chong. He told Huang to stop signing and to let him have a look at the letter. The wording of the letter of invitation to prospective members of the club was in the following terms:

> As you are known to our directors to be of high repute, we are pleased to invite you to join the exclusive City Country Club. Enclosed herewith you will find a brochure and a copy of the rules of the club together with an application form.
>
> If you accept our invitation please complete the application form and return the same to us together with your payment for the entrance fee.
>
> The entrance fee for an individual is $2,000 and for a corporation or firm is $3,000 (two nominees).
>
> Upon acceptance of this invitation you shall be a qualified person under r 9 of the rules of the club and shall be entitled to the rights under r 10 of the rules of the club.
>
> To become a member of the club you must within a period of one month of your becoming a qualified person, become the registered holder in CCC (Holdings) Ltd of:
> (a) in the case of an individual, one (1) ordinary share of $5,000 at $30,000; or
> (b) in the case of a firm or corporation, two (2) ordinary shares of $5,000 each at $30,000 each.
>
> You may purchase your share(s) from any of the broking firms listed below upon presentation to the said broking firm of a letter of confirmation from the board confirming that you are a qualified person of the club.

The original version of the letter did not state that the sale price of each of the $5,000 shares was to be $30,000. The sale price had been inserted at the suggestion of Derrick Chong. As indicated in the letter of invitation, the club rules book was to be enclosed. The material rules in the club rules book were:

> 9 Upon acceptance of the invitation accompanied by payment in the sum of $2,000 the invitee shall become a qualified person for the non-extendable period of one (1) month from the date of acceptance. Where the invitee is a firm or corporation the acceptance must be accompanied by the invitee's statement in writing specifying the two nominees thereof entitled to exercise the privileges of the invitee as a qualified person with an additional payment of $1,000.
>
> 10 A qualified person shall be entitled to all the privileges of a member and be subject to the same rules as a member until the qualified person ceases to be a qualified person either by becoming a member or by reason of r 11.

11 If during the said period of one (1) month the qualified person fails to become the registered shareholder in CCC (Holdings) Ltd of the following:
(a) in the case of an individual, one (1) ordinary share of $5,000;
(b) in the case of a firm or corporation, two (2) ordinary shares of $5,000 each;
then the qualified person shall cease to be a qualified person. Where a share or shares in CCC (Holdings) Ltd are registered in the names of more than one person as joint holders ...

12 Upon a qualified person ceasing to be such then:
(a) if the cessation is by virtue of the qualified person becoming a member, the sum or sums paid under r 9 shall be deemed to be payment to the club towards entrance fee;
(b) if the cessation is by virtue of r 11, the said sum shall be deemed to be payment by the qualified person made to the club for the use of the clubhouse and facilities and shall belong to the club absolutely.

After going through the letter, the respondent amended the last paragraph of the letter, and then deleted the sale price of $30,000. The reason proffered by the respondent in his testimony was:

> Because I felt that if you are saying 'please make an offer to purchase the share at $30,000 each' it would still be an offer or may be interpreted as an offer.

The respondent wanted the letter to be an invitation to treat.

Quek Leng Chye asked how the invitees were to know how much to offer for the shares. The respondent replied that Huang had been telling all his friends that the shares were $30,000 each. Derrick Chong said the invitees could always ask the brokers or telephone the company. After having agreed to the deletion of the $30,000, Quek suggested that the 'five thousand dollars should go off too'. The respondent also altered the paragraph regarding entrance fee by including a reference to r 12 of the club rules (the forfeiture clause). He wanted to put the reader on notice to read the rule carefully before deciding to pay the entrance fee.

Accordingly, fresh invitation letters were printed. The final version of the letter of invitation that was sent out read :

> As you are known to our directors to be of high repute, we are pleased to invite you to join the exclusive City Country Club. Enclosed herewith you will find a brochure and a copy of the rules of the club together with an application form.
>
> If you accept our invitation please complete the application form and return the same to us together with your payment for the entrance fee as soon as possible.
>
> The entrance fee for an individual is $2,000 and for a corporation or firm is $3,000 (two nominees) and your attention is drawn to r 12 of the rules of the club.
>
> Upon acceptance of this invitation you shall be a qualified person under r 9 of the rules of the club and shall be entitled to the rights under r 10 of the rules of the club.
>
> To become a member of the club you must within a period of one month of your becoming a qualified person, become the registered holder in CCC (Holdings) Ltd of:
> (a) in the case of an individual, one (1) ordinary share;
> (b) in the case of a firm or corporation, two (2) ordinary shares.
>
> You may contact the broking firm named below with a letter of confirmation from the board confirming that you are a qualified person of the club to make your offer to purchase the share(s).

Many of the invitees accepted the invitation and paid the fee stipulated in r 9 of the club rules and thus became 'qualified persons' within the meaning of those rules. Many of them knew that the price of each share was $30,000. Unfortunately, some did not. They thought the shares would be sold at $5,000 each. A complaint was lodged with the Registrar of Companies and investigations were commenced. Subsequently, the money paid by applicants for the shares was returned.

The respondent, together with Huang, Quek Leng Chye, Derrick Chong and two others were eventually charged in the District Court. On 9 February 1983, the respondent pleaded guilty to the following charge:

> You, Winston Chung Ying Chen, are charged that you, in the month of March 1982 abetted the directors of CCC (Holdings) Ltd in contravening s 39(4) of the Companies Act (Cap 185, 1970 Ed) by aiding the said directors in the preparation of documents which you knew were intended to be sent out by the directors in the month of April 1982 and in the first two weeks of May of that year and the documents offered shares in CCC (Holdings) Ltd for sale to the public and are deemed to be prospectuses issued by the company by virtue of s 43 of the Companies Act and they do not comply with the requirements of that Act and you have thereby committed an offence punishable under s 39(4) of the Companies Act read with s 109 of the Penal Code.

Upon his plea of guilt, he was convicted by the District Court. On 12 February 1983, the respondent was sentenced to pay a fine of $4,000.

The conclusion of the Disciplinary Committee

Charge no 2 (the conviction charge)

In the DC's view, the respondent, by his plea of guilt, irretrievably admitted the following:

(1) that the letter of invitation, as sent out, offered shares in CCC (Holdings) Ltd for sale to the public;
(2) that the letter of invitation and other documents sent with it were deemed to be prospectuses by virtue of s 43 of the Companies Act;
(3) that the respondent knew that the documents were intended to be sent out by the directors offering shares in CCC (Holdings) Ltd for sale to the public;
(4) that the respondent further knew that the documents did not comply with the requirements of the Companies Act relating to prospectuses.

The DC noted, quite correctly, that a conviction per se was not sufficient to warrant disciplinary action; it must imply a defect of character which made the respondent unfit for his profession. The DC then proceeded to consider whether the plea of guilt and conviction of the offence in question had such an implication. It answered in the affirmative. In coming to its conclusion, the DC took the following into consideration:

(1) the statutory provision giving rise to the offence is founded on public policy and its purpose is protection of unwary investors. It would be a defect in the character of a solicitor if he professionally assisted directors and promoters in infringing or circumventing the provisions of the Act in this respect;
(2) by his plea of guilt the respondent admitted that under the circumstances of this case the issue of a prospectus was necessary. Huang wished to avoid issuing the prospectus because it would have hindered or restricted him from putting into operation his intention of making huge profits. Thus the respondent was directly connected with the misfeasance;
(3) in order to circumvent the provision of the Companies Act and find a defence in case things went wrong the respondent took advantage of the friendship between Mr Chow Peng and the assistant registrar;
(4) the non-compliance with the requirements of the Companies Act relating to prospectus in effect amounted to a concealment of an important matter, viz the price at which the shares were being sold and that it involved a huge premium. This concealment was deliberate and the respondent was more responsible for this than anyone else.

Charge no 3 (the grossly improper conduct charge)

The DC was of the opinion that anyone reading the letter of invitation together with rr 9, 10, 11 and 12 of the club rules alone would reasonably believe that the shares were being sold at $5,000. If he paid the qualifying fee (of $2,000 or $3,000) and then discovered that the price of a share was not $5,000 but $30,000 or more, he would find himself trapped by having to forgo the qualification fee. The DC was of the view that it was a trap situation likely to cause embitterment and financial loss, and could have been avoided by explicitly stating in the invitation letter that the price of each share was in fact $30,000.

The DC found that the respondent wanted the deletion of the sale price because all along Huang did not want to state it, and that was the true reason for not issuing a prospectus. Huang did not want to be bound by the price and wanted to increase it if response was favourable. After having found an escape route from the prospectus problem, the DC went on to say, it was now meaningless to state the price of the share.

The DC had no hesitation in disbelieving the respondent and rejecting his explanation for the deletion of the price, ie that he did not want the letter of invitation to be construed as an offer. The DC found support in an attendance note made on 12 May 1982 by Chow Peng which indicated the respondent had clarified that at the meeting at Huang's office it was decided only the par value would be stated because the vendors might want to increase the price later.

The DC therefore found that the concealment of the premium had been deliberate to enable the shares to be sold at a price higher than $30,000. Accordingly, the DC concluded that the respondent's conduct amounted to grossly improper conduct in the discharge of his professional duties within the meaning of s 80(2)(b) of the Legal Profession Act and that such conduct also fell within the ambit of s 80(2)(h) of that Act.

The DC also ordered that the respondent bear the costs of those proceedings.

Our decision

It is appropriate at this stage to set out the provisions of the Legal Profession Act referred to in the Law Society's charges against the respondent. Section 80 reads:

> 80(1) All advocates and solicitors shall be subject to the control of the Supreme Court and shall be liable on due cause shown to be struck off the roll or suspended from practice for any period not exceeding two years or censured.
>
> (2) Such due cause may be shown by proof that an advocate and solicitor –
>
> (a) has been convicted of a criminal offence, implying a defect of character which makes him unfit for his profession;
>
> (b) has been guilty of fraudulent or grossly improper conduct in the discharge of his professional duty or guilty of such a breach of any usage or rule of conduct made by the Council under the provisions of this Act as in the opinion of the court amounts to improper conduct or practice as an advocate and solicitor;
>
> ...
>
> (h) has done some other act which would render him liable to be disbarred or struck off the roll of the court or suspended from practice or censured if a barrister or solicitor in England due regard being had to the fact that the two professions are fused in Singapore.

Charge no 2 (the conviction charge)

The Privy Council in the case of *Isaac Paul Ratnam* v *Law Society of Singapore*[1] said:

> The appellant had argued before the High Court that, on the facts and having regard to all the circumstances, his conviction could not be said to imply a defect of character making him unfit for his profession within s 82(2)(a) of the Legal Profession Act. The High Court held that the nature of the

offence is the sole criterion in determining whether or not an advocate and solicitor comes within the provisions and that the offence in question was one which clearly implied such a defect of character in the appellant. This construction of the statutory provision by the High Court, and the conclusion therefrom, were barely controverted before their Lordships. On the view which their Lordships have taken, the conviction (or, more importantly, the admitted conduct which led to such conviction) was relevant under the circumstances to s 84(2)(b) rather than (a). But, did the matter fall for necessary decision, their Lordships would be in no way disposed to disagree with the construction adopted by the High Court. Of course, the mere 'nature' of the offence will often be of little guidance to the moral obliquity actually involved. But it is in the penalty that the court will have regard to the moral obliquity.

The earlier reference in the passage quoted to s 82(2)(a) is probably a typographical error. It should be s 84, which is the present s 80 of the Legal Profession Act.

An analysis of their Lordships' observations in that case reveals two points:

(1) we must first look at the nature of the offence, which is the sole criterion in determining whether or not an advocate and solicitor comes within s 80(2)(a) of the Legal Profession Act;

(2) if we decide that the offence implies a defect of character making the advocate and solicitor unfit for his profession, we then have to determine which of the three penalties is the appropriate one. It is at this stage that we have regard to the moral obliquity actually involved, and this could encompass the conduct leading to such conviction.

We now return to the facts of this case. The respondent was convicted of abetting a contravention of s 39(4) of the Companies Act. Section 39(4) and (5), before the amendment made in 1984 increasing the fine, read:

> 39(4) Where a prospectus relating to any shares in or debentures of a corporation is issued and the prospectus does not comply with the requirements of this Act, each director of the corporation and other person responsible for the prospectus shall be guilty of an offence under this Act and shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding five thousand dollars.
>
> (5) In the event of non-compliance with or contravention of any of the requirements set out in this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if –
>
> (a) as regards any matter not disclosed, he proves that he was not cognizant thereof;
> (b) he proves that the non-compliance or contravention arose from an honest mistake on his part concerning the facts; or
> (c) the non-compliance or contravention was in respect of matter which in the opinion of the court dealing with the case was immaterial or was otherwise such as ought, in the opinion of that court, having regard to all the circumstances of the case, reasonably to be excused.

In the light of s 39(5), the offence created by s 39(4) cannot be said to be technical in nature and of the character of strict liability offences. (On this point, see also the judgments of the High Court [1984] 1 MLJ 5 at p 11 and of the Court of Appeal [1985] 1 MLJ 97 at p 104, in proceedings commenced by the directors of CCC (Holdings) Ltd under s 130 of the Companies Act.) However, in the proceedings before us, counsel for the Law Society conceded that the offence in question was a strict liability one. He submitted, nevertheless, that to abet, one must know the facts that constituted the offence. So although the principal may be charged with a strict liability offence, the abettor must know the essential facts constituting the offence.

Counsel for the respondent submitted that a plea of guilt was evidence of the essential legal ingredients of the offence and no more. The essential legal ingredients, he argued, were:

(a) the accused was a director of the company or a person responsible for the prospectus;
(b) a document had been issued which in law constituted a prospectus; and
(c) the prospectus did not comply with the requirements of the Companies Act.

There was no requirement that the accused knew the document issued was in law a prospectus, and ignorance of the law was not a defence. To constitute the abetment of that offence, there must be the intention on the abettor's part that the document be issued, but there was no requirement that he knew the persons to which they were issued constituted in law the public or a section thereof.

Counsel for the respondent further submitted that the importance of the information omitted from the document deemed to be a prospectus precluded the application of s 39(5) and that in any event, the statutory defences were not available to the respondent who was charged as an abettor and was not a director or a person responsible for the prospectus.

It was said the respondent's conviction was morally neutral, being consistent with an explanation implying no moral fault or defect of character, and although the DC gave four reasons for coming to the conclusion that the conviction implied a defect of character (as quoted by us earlier on in this judgment), only the first reason was relevant. However, it was submitted, the offence was consistent with an error of judgment on the law, and that had been the respondent's evidence all along. He did not think a prospectus was required in the circumstances, but he had been proved wrong and had acknowledged the error.

Applying the test laid down in *Isaac Paul Ratnam's* case,[1] we agree with the respondent's counsel's arguments. We agree with the DC that the statutory provision giving rise to the offence was founded on public policy.

However, in so far as the DC had by implication found that the respondent had committed an intentional breach of the law, that was in our opinion against the weight of the evidence. The respondent had no defence in law because he was wrong in his view that the invitees did not constitute 'the public' or 'any section of the public' and by virtue of the 'deeming' provision in s 43 of the Companies Act. It was not an essential ingredient of the offence he was charged with that he knew that the invitees were, in law, the public or a section thereof. Whether he was negligent in coming to that opinion is a civil matter to be decided, if raised, by another forum.

Practically all offences created by statutes are based on public policy. There must be something intrinsic in the offence which compels us to come to the conclusion that there was a defect of character within the meaning of s 80(2)(a) of the Legal Profession Act. The nature of the offence for which the respondent was convicted, unlike those where fraud or dishonesty is an essential component, does not irresistibly imply that there was such a defect of character.

The DC's second reason does not take the case against the respondent any further. His subsequent admission that a prospectus was necessary in the circumstances is equally consistent with an error of legal judgment on his part.

The DC's third reason is not only irrelevant to charge no 2 (the conviction charge), it is also contradictory to the DC's findings in respect of charge no 1, on which the respondent was acquitted. A solicitor's conduct and the circumstances leading to a conviction would be relevant to a charge under s 80(2)(b), rather than to one under s 80(2)(a) of the Legal Profession Act. They would also be relevant when considering the 'moral obliquity' and hence the sentence, if the conviction falls within s 80(2)(a) in the first place.

The fourth reason given by the DC is objectionable in so far as it stated that the concealment of the price was deliberate and the respondent was more responsible for this than anyone else. We shall amplify on this in our judgment concerning charge no 3. It is also to be noted that consequences flowing from an offence, like circumstances leading to a conviction, are relevant for the purpose of determining the moral turpitude involved if, but only if, the conviction comes within the ambit of s 80(2)(a).

Accordingly, we are of the opinion that charge no 2 has not been made out by the Law Society.

Charge no 3 (the grossly improper conduct charge)

The main issue that we have to decide here is whether the DC was justified in rejecting the respondent's explanation concerning the deletion of the sale price of the shares. The DC noted that the directors were prepared wittingly or unwittingly to reveal the price of the shares in the letter of invitation. It was the respondent who stopped them. The DC found that the reason was to enable the shares to be sold at a price higher than $30,000.

Counsel for the respondent submitted that the conclusion of the DC was objectionable for the following reasons:

(1) it was never the case of the Law Society that the respondent's motive was that found to exist by the DC;

(2) the respondent had testified that he read the invitation letters for the first time at the meeting on 30 March 1982. He had instinct to guide him and had deleted the price to ensure that the letter was an invitation to treat and would not be construed as an offer. This would also accord with his letter of 2 December 1981 to the Registrar of Companies that it would be the invitees who would be making the offers to purchase. This account was corroborated by Chow Peng, who was the Law Society's witness;

(3) the alleged motive was never put to the respondent in cross-examination. The only motive suggested was a desire not to alert the tax authorities;

(4) if the respondent had any such devious plan with Huang, he would not have left the drafting of the invitation letter to Chow Peng. He would also have been anxious to attend the 30 March 1982 meeting and vet the letter rather than being told to go, against his wishes;

(5) the DC was not entitled to rely on Chow Peng's attendance note of 12 May 1982 because the relevant passage therein was never brought to the attention of the respondent or Chow Peng while they were testifying. In any event, the passage could not be a correct version of what had been said because the par value was likewise agreed to be deleted, contrary to what the attendance note indicated.

Counsel for the Law Society's reply to ground (3) was that the documents and other evidence adduced were sufficient. There was therefore no need to put the motive to the respondent.

We need only say that we find the above arguments for the respondent to be cogent and feel compelled to agree with them entirely. In the light of the evidence, the DC ought not to have rejected the respondent's explanation for the deletion of the price.

The DC appeared also to have come to the view that a trap had been set by the failure to mention the sale price. Invitees who became 'qualified persons' would have to pay the $30,000 or lose the $2,000/$3,000 fee already paid. If any intentional trap was suggested, that

would be inconsistent with the respondent's conduct in wanting to amend the invitation letter so that the invitees' attention was drawn to r 12 (the forfeiture clause) of the club rules. More importantly, in our view, it was improbable that the directors would intend to entrap the invitees who were their friends, business associates and generally people of some social and financial standing in society. Furthermore, it is not disputed that Huang had already informed many of his friends that the sale price was $30,000 per share and many of the invitees did in fact know what the price was. The price had also been published in the newspapers on 5 and 6 April 1982. The acknowledged intention of the scheme was to establish an exclusive club and to profit substantially from it.

In any case, while the making of enormous profits may be morally objectionable to some, it is not morally wrong to want to make as much profit as possible and certainly not criminal per se. In that context, even if the deletion of the sale price was indeed to enable Huang to increase it subsequently, we do not think it amounted to such reprehensible conduct as to come within the ambit of s 80(2)(b) of the Legal Profession Act.

Accordingly, we must also disagree with the conclusions of the DC on this charge.

Conclusion

We find that the two charges nos 2 and 3 have not been made out by the Law Society. The respondent has therefore shown cause why he should not be dealt with by this court under the provisions of s 80 of the Legal Profession Act.

Having regard to all the circumstances we order that each party is to bear its own costs in the proceedings before us and before the Disciplinary Committee.

Order accordingly.

Solicitors: *Allen & Gledhill*; *Warren Khoo & Co.*

Reported by *Wong Kim Fatt*

Haji Aminah bte Bakri v Manisah bte Haji Bakri & Ors

HIGH COURT (SINGAPORE) – ORIGINATING SUMMONS NO 976 OF 1987
CHAO HICK TIN JC
1 NOVEMBER 1988

Succession – Wills – Co-executrix granted option for sale of testatrix's estate to third defendant without consulting executrix – Option contained clause that property is sold subject to co-executrix 'obtaining court's approval to sanction the sale if necessary' – Executrix subsequently received offer for sale of land at higher price than option price – Conditional contract for higher price entered into by executrix and new purchaser – Whether 'necessary' to obtain court's approval to sanction sale given by option – Whether sale to third defendant should be approved

Succession – Wills – Duty of court in approving sale of testatrix's estate by executrix – Relevant date in determining whether sale price is fair – Executrix's duty to secure the best price for sale

Evidence – Option granted for sale of land – Evidence of oral statements admissible to ascertain meaning of clause in option – Exception to parol evidence rule – Evidence Act (Cap 97, 1985 Ed), s 94

Words and Phrases – 'If necessary'

The plaintiff and the first defendant were both executrixes and trustees of the estate of a testatrix, which comprised a piece of property. After the death of the testatrix but well before any application was made for a grant of probate of the testatrix's will, the first defendant gave an option to the third defendant to purchase the piece of property for a sum of $432,600.

This option contained a clause, cl 15, which stated that 'the property is sold subject to (the first defendant) obtaining the court's approval to sanction the sale, if necessary'. The option was given by the first defendant without consulting the plaintiff, and was subsequently exercised by the third defendant. Later, the plaintiff received an offer to purchase the property at $560,000 and entered into a conditional contract of sale with the new purchaser at that price.

The plaintiff filed this originating summons, seeking the court's disapproval of the sale effected by the option granted by the first defendant to the third defendant. Counsel for the third defendant contended that: (a) the expression 'if necessary' in cl 15 of the option should be construed to mean as required or necessitated by law; and (b) that the facts deposed to in the affidavit of J, the first defendant's solicitor, should not be admissible by the court as evidence of any oral agreement or statement to contradict, vary, add to or subtract from the option granted by the first defendant.

Held, allowing the application in part:

(1) The word 'necessary' in cl 15 should not be construed to mean 'required by law'. What is necessary in a particular case is a question of fact. Clause 15 was inserted specifically for the protection of the first defendant, ie she reserves to herself the liberty to apply for the sanction of court if it is thought necessary for her protection. An instance where such an application to court would be necessary is where a beneficiary or a co-executrix explicitly alleges that the executrix has sold the property grossly below market price and thus caused loss to the